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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 180720681-8681-01]

RIN 0648-BI38

Snapper-Grouper Fishery of the South Atlantic Region;

Management Measures to End Overfishing of Golden Tilefish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Regulatory Amendment 28 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would revise the commercial and recreational annual catch limits (ACLs) for golden tilefish. The purpose of this proposed rule is to end overfishing of golden tilefish while minimizing, to the extent practicable, adverse socio-economic effects and achieve optimum yield (OY) on a continuing basis in the South Atlantic.

DATES: Written comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2018-0091," by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal:

<http://www.regulations.gov>. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0091 click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Karla Gore, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly

accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of the environmental assessment (EA), which includes an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2017/golden_tilefish_interim/index.html. The EA includes a Regulatory Flexibility Act (RFA) analysis.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes golden tilefish, along with other snapper-grouper species. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure

that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Golden tilefish are harvested by both commercial and recreational fishermen throughout the South Atlantic, although the majority of landings are attributed to the bottom longline component of the commercial sector. Using data through 2010, the golden tilefish stock was assessed in 2011 through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process (SEDAR 25). SEDAR 25 results indicated that the golden tilefish stock was not subject to overfishing, and it was not overfished. Based upon the results of SEDAR 25, Amendment 18B to the FMP and its implementing final rule allocated the total ACL among the sectors and commercial gear components (*i.e.*, bottom longline and hook-and-line), and specified the ACLs based upon the determined allocation percentages, among other actions (78 FR 23858; April 23, 2013). For golden tilefish, 97 percent of the combined (commercial and recreational sectors together) ACL is allocated to the commercial sector, with 25 percent of the commercial ACL available for harvest by the hook-and-line component and 75 percent of the commercial ACL available for the longline component.

The recreational sector is allocated 3 percent of the combined ACL.

In April 2016, an update to SEDAR 25 was completed for golden tilefish using data through 2014 (SEDAR 25 Update 2016). The SEDAR 25 Update 2016 indicated that golden tilefish is undergoing overfishing but is not overfished. In May 2016, the Council's Scientific and Statistical Committee (SSC) reviewed the SEDAR 25 Update 2016 and indicated that the SEDAR 25 Update 2016 was based on the best scientific information available. The SSC provided an ABC recommendation to the Council at that time.

During the Council's review of the SEDAR 25 Update 2016 in June 2016, the Council stated their concerns over the large differences between SEDAR 25 and the SEDAR 25 Update 2016 in biological benchmarks such as the maximum sustainable yield calculations, social and economic consequences of the substantial reduction of the ABC (60 percent), and the unusually high buffer (34 percent) estimated between the ABC and the overfishing limit. Based on the Council's concerns over the differences between SEDAR 25 and the SEDAR 25 Update 2016, the NMFS Southeast Fisheries Science Center revised the SEDAR 25 Update 2016 to include a newly developed model. The SSC reviewed the revised assessment at their October 2017 meeting and did

not recommend basing stock status and fishing level recommendations on the revised assessment, but rather on the SEDAR 25 Update 2016.

In a letter dated January 4, 2017, NMFS notified the Council of the updated golden tilefish stock status determination that the stock is undergoing overfishing but is not overfished. As mandated by the Magnuson-Stevens Act, NMFS and the Council must prepare and implement a plan amendment and regulations to end overfishing of golden tilefish within 2 years of such stock status notification. Therefore, the Council began development of a regulatory amendment to end overfishing of golden tilefish. However, the initial acceptable biological catch (ABC) recommendation from the Council's SSC was not available until late October 2017, which provided insufficient time for the Council and NMFS to develop and implement management measures to end overfishing of golden tilefish in time for the start of the 2018 fishing year on January 1, 2018. Consequently, in a letter to NMFS dated June 27, 2017, the Council requested that NMFS implement interim measures to immediately reduce overfishing of golden tilefish while long-term measures could be developed. A temporary rule, published in the **Federal Register** on January 2, 2018 (83 FR 65), reduced the combined ACL to 323,000 lb (146,510 kg),

gutted weight. This catch level was based on a projected yield at 75 percent of the yield produced by the fishing mortality rate at maximum sustainable yield, which was 362,000 lb (164,654 kg) whole weight, converted to gutted weight using a conversion factor of 1.12. On June 19, 2018 (83 FR 28387), the temporary rule was extended for an additional 186 days, through January 3, 2019. The measures in Regulatory Amendment 28, as described in this proposed rule, would replace the current interim measures outlined in the temporary rule and end overfishing of golden tilefish in the South Atlantic. It is necessary to ensure that this rule becomes effective before or by the temporary rule's expiration date, January 4, 2019. Failure to implement Regulatory Amendment 28 by the expiration of the temporary rule may risk overfishing of golden tilefish because ACLs will change back to pre-temporary rule levels and become much higher. This increase in ACLs may cause confusion among fishers and for law enforcement, especially when the ACLs will then lower again once this proposed rule is effective.

As noted above, the Council's SSC reviewed the SEDAR 25 Update 2016 assessment in May 2016 and provided fishing level recommendations based on a P* (probability of overfishing) value of 30 percent derived from the Council's

ABC control rule. However, at the Council's March 2018 meeting, the Council determined that they are willing to accept a risk of overfishing larger than $P^* = 30$ percent. The Council determined that they were willing to accept a risk of overfishing at the ACL level previously implemented through the temporary rule. The ACL implemented through the temporary rule was equal to the yield at a fishing mortality rate (F) equal to 75 percent of the fishing mortality rate at the maximum sustainable yield (FMSY) when the population is at equilibrium. This new ABC value represented a level closer to a P^* value of 40 percent. At their May 2018 meeting, the SSC reviewed the Council's request to revise the ABC recommendation and agreed with setting the ABC equal to the value at $F = 75$ percent FMSY when the population is at equilibrium. Therefore, the SSC's revised ABC recommendation was 362,000 lb (164,200 kg), whole weight. Although it is different than the conversion factor applied for the temporary rule, an updated conversion factor of 1.059, which was used in the SEDAR 25 Update 2016 assessment and is considered the best scientific information available, results in an ABC of 342,000 lb (155,129 kg), gutted weight. This revised ABC recommendation forms the basis for the actions in Regulatory Amendment 28 and this proposed rule, which is

intended to end overfishing of golden tilefish in the South Atlantic.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the combined ACL for golden tilefish to be 342,000 lb (155,129 kg), gutted weight. The combined ACL is equal to the SSC's final ABC recommendation of the yield at $F = 75$ percent FMSY. This proposed rule would also specify the commercial and recreational sector ACLs and component commercial quotas using the existing sector allocations of 97 percent commercial and 3 percent recreational, as well as allocating 25 percent of the commercial ACL to the hook-and-line component and 75 percent of the commercial ACL to the longline component. Therefore, the commercial ACL (equivalent to the commercial quota) would be 331,740 lb (150,475 kg), gutted weight. The commercial ACL for the hook-and-line component would be 82,935 lb (37,619 kg), gutted weight, and the commercial ACL for the longline component would be 248,805 lb (112,856 kg), gutted weight. The recreational ACL would be 2,316 fish. The ACL values in this proposed rule would remain in effect in future years unless changed by the South Atlantic Fishery Management Council.

The current accountability measures (AMs) for golden tilefish require that a sector or commercial gear component close for the remainder of the fishing year if its respective ACL is reached or projected to be reached. The reductions in the sector and commercial gear-component ACLs could result in earlier in-season closures, particularly for the commercial sector as a result of an ACL being reached or projected to be reached during a fishing year. These closures would likely result in short-term adverse socio-economic effects. However, the reduction in the ACLs in this proposed rule is expected to end overfishing of golden tilefish and will likely minimize future adverse socio-economic effects. Adhering to sustainable harvest through an ACL based on information from the most recent stock assessment (SEDAR 25 2016 Update) is expected to be more beneficial to fishermen and fishing communities in the long term because catch limits would be based on the current conditions, even if the updated stock assessment information indicates that reduced ACLs are appropriate to sustain the stock. The reduction in the ACLs in this proposed rule would also provide biological benefits (such as protections against recruitment failure) to the golden tilefish stock by reducing the current levels of fishing mortality. The revised ACL values in Regulatory Amendment

28 and this proposed rule are based on the best scientific information available.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 28, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order (EO) 12866. This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

NMFS prepared an IRFA for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for, this proposed rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

This proposed rule, if implemented, would be expected to directly affect federally permitted commercial fishermen fishing for golden tilefish in the South Atlantic. Recreational anglers fishing for golden tilefish would also be directly affected by this proposed rule, but anglers are not considered business entities under the RFA. For-hire vessels would also be affected by this rule, but only in an indirect way. Thus, only the effects on federally permitted snapper-grouper commercial fishing vessels will be discussed. For RFA purposes only, the NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR § 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including

affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

From 2012 through 2016, an average of 23 longline vessels per year landed golden tilefish from the South Atlantic. The golden tilefish longline endorsement system started in 2013. Endorsed vessels, combined, averaged 255 trips per year in the South Atlantic on which golden tilefish were landed, and 182 other trips that were either in the South Atlantic but no golden tilefish were caught or took place in other areas (Gulf or Mid-Atlantic) that caught any species including golden tilefish. The average annual total dockside revenue (2016 dollars) for these vessels combined was approximately \$1.56 million from golden tilefish, approximately \$0.10 million from other species co-harvested with golden tilefish (on the same trips), and approximately \$0.43 million from other trips by these vessels on trips in the South Atlantic on which no golden tilefish were harvested or on trips which occurred in other areas. Total average annual revenue from all species harvested by longline vessels landing golden tilefish in the South Atlantic was approximately \$2.10 million, or approximately \$92,000 per vessel. Longline vessels generated approximately 74 percent of their total revenues from golden tilefish. For the same period, an

average of 82 vessels per year landed golden tilefish using other gear types (mostly hook-and-line) in the South Atlantic. These vessels, combined, averaged 483 trips per year in the South Atlantic on which golden tilefish were landed and 2,862 trips taken in the South Atlantic on which golden tilefish were not harvested or trips that took place in other areas and caught any species including golden tilefish. The average annual total dockside revenue (2016 dollars) for these 82 vessels was approximately \$0.36 million from golden tilefish, approximately \$0.66 million from other species co-harvested with golden tilefish (on the same trips in the South Atlantic), and approximately \$4.13 million from the other trips taken by these vessels. The total average annual revenue from all species harvested by these 82 vessels was approximately \$5.16 million, or approximately \$62,000 per vessel. Approximately 7 percent of these vessels' total revenues came from golden tilefish.

Based on the foregoing revenue information, all commercial vessels using longlines or hook-and-line affected by the proposed rule may be assumed to be small entities. Because all entities expected to be directly affected by this proposed rule are assumed to be small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. However,

since all affected entities are small entities, the issue of disproportionate effects on small versus large entities does not arise in the present case.

The proposed rule would reduce the combined stock ACL, and consequently the specific ACLs for the commercial and recreational sectors as well as the longline and hook-and-line component ACLs for the commercial sector. The longline and hook-and-line components of the commercial sector would be expected to lose approximately \$592,000 and \$217,000, respectively, in annual ex-vessel revenues. This would very likely translate to profit reductions for both the longline and hook-and-line components, particularly for longline vessels as they are more dependent on golden tilefish. As noted above, golden tilefish account for about 74 percent of longline vessel revenues and 7 percent of hook-and-line vessel revenues. There is a good possibility ACLs may be changed in the future if the proposed rule were successful in addressing the overfishing condition for the South Atlantic golden tilefish. Economic benefits would ensue if the ACLs are subsequently increased.

The following discussion analyzes the alternatives that were considered by the Council, including those that were not selected as preferred by the Council. Unlike the preferred alternative, most of the other alternatives would

provide for varying ACLs over 6 years, at least. For this reason, a 6-year period is considered for comparing alternatives. Over a 6-year period, the preferred alternative would be expected to reduce revenues by approximately \$3.02 million for the longline segment and \$1.11 million for the hook-and-line segment of the commercial sector, using a 7 percent discount rate.

Ten alternatives, including the preferred alternative as described above, were considered for reducing the South Atlantic golden tilefish ACLs. The first alternative, the no action alternative, would maintain the current economic benefits to all participants in the South Atlantic golden tilefish component of the snapper-grouper fishery. This alternative, however, would not address the need to curtail continued overfishing of the stock, thereby increasing the likelihood that more stringent measures would need to be implemented in the near future.

With one exception, all the other alternatives would result in larger revenue losses to the longline and hook-and-line vessels than the preferred alternative. Alternatives that would result in larger revenue losses than the preferred alternative would provide for lower ACLs over a 6-year period. Total losses over 6 years from these alternatives would range from \$3.17 million to \$4.29

million for longline vessels and from \$1.16 million to \$1.83 million for hook-and-line vessels. The alternative with lower attendant revenue losses than the preferred alternative would be expected to reduce total ex-vessel revenues by approximately \$2.65 million for longline vessels and \$0.97 million for hook-and-line vessels over 6 years. Relative to the preferred alternative, this alternative would result in larger ex-vessel revenue losses initially but lower revenue losses in subsequent years, because the ACLs in subsequent years would be greater than those of the preferred alternative. Both alternatives would be expected to result in early harvest closure, and in the first fishing year, harvest closure under the preferred alternative would occur at a later date than that of the other alternative. The reverse may be expected for the subsequent years. The Council considered the preferred alternative as affording the best means to end overfishing of golden tilefish in the South Atlantic, because it is based on the best scientific information available.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Golden
tilefish, South Atlantic.

Dated: September 21, 2018.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part
622 is proposed to be amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO,
AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Amend § 622.190 by revising paragraph (a)(2) to read
as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(2) *Golden tilefish.* (i) *Commercial sector (hook-and-line and longline components combined)*—331,740 lb (150,475 kg).

(ii) *Hook-and-line component*—82,935 lb (37,619 kg).

(iii) *Longline component*—248,805 lb (112,856 kg).

* * * * *

3. Amend § 622.193 by revising paragraph (a) to read as follows

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Golden tilefish* - (1) *Commercial sector*—(i) *Hook-and-line component.* If commercial hook-and-line landings for golden tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL (commercial quota) specified in § 622.190(a)(2)(ii), the AA will file a notification with the Office of the Federal Register to close the hook-and-line component of the commercial sector for the remainder of the fishing year. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(ii) *Longline component.* If commercial longline landings for golden tilefish, as estimated by the SRD, reach or are projected to reach the longline commercial ACL (commercial quota) specified in § 622.190(a)(2)(iii), the

AA will file a notification with the Office of the Federal Register to close the longline component of the commercial sector for the remainder of the fishing year. After the commercial ACL for the longline component is reached or projected to be reached, golden tilefish may not be fished for or possessed by a vessel with a golden tilefish longline endorsement. Applicable restrictions after a commercial quota closure are specified in § 622.190(c).

(iii) If all commercial landings of golden tilefish, as estimated by the SRD, exceed the commercial ACL (including both the hook-and-line and longline component quotas) specified in § 622.190(a)(2)(i), and the combined commercial and recreational ACL of 342,000 lb (155,129 kg) is exceeded during the same fishing year, and golden tilefish are overfished based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL for that following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* (i) If recreational landings of golden tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 2,316 fish, the AA will file a notification with the Office of the Federal

Register to close the recreational sector for the remainder of the fishing year regardless if the stock is overfished, unless NMFS determines that no closure is necessary based on the best scientific information available. On and after the effective date of such a notification, the bag and possession limits for golden tilefish in or from the South Atlantic EEZ are zero.

(ii) If recreational landings of golden tilefish, as estimated by the SRD, exceed the recreational ACL specified of 2,316 fish, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings, and if necessary, the AA will file a notification with the Office of the Federal Register to reduce the length of the recreational fishing season and the recreational ACL by the amount of the recreational ACL overage, if the species is overfished based on the most recent Status of U.S. Fisheries Report to Congress, and if the combined commercial and recreational ACL of 342,000 lb (155,129 kg) is exceeded during the same fishing year. The AA will use the best scientific information available to determine if reducing the length of the recreational fishing season and recreational ACL is necessary. When the recreational sector is closed as a result of NMFS reducing the length of the recreational fishing season and ACL, the

bag and possession limits for golden tilefish in or from
the South Atlantic EEZ are zero.

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